

Wyoming Housing Commission



Informal Hearing Policies and Procedures

HUD Code of Federal Regulations and Wyoming Housing Commission Policies

NOTICE TO THE FAMILY [24 CFR 982.555(c)]

When the WHC makes a decision that is subject to informal hearing procedures, the WHC must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the WHC must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the WHC's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

WHC Policy

In cases where the WHC makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- ~ The proposed action or decision of the WHC.
- ~ A brief statement of the reasons for the decision including the regulatory reference and/or WHC policy.
- ~ The date the proposed action will take place.
- ~ A statement of the family's right to an explanation of the basis for the WHC's decision.
- ~ A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- ~ A deadline for the family to request the informal hearing.
- ~ To whom the hearing request should be addressed.
- ~ A copy of the PHA's hearing procedures.

SCHEDULING AN INFORMAL HEARING [24 CFR 982.555(d)]

When an informal hearing is required, the WHC must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

WHC Policy

A request for an informal hearing must be made in writing and delivered to the WHC either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the WHC's decision or notice to terminate assistance.

If a request is not made within the 10 business days, the participant waived their right to an informal hearing.

The WHC must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the WHC may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the WHC within 24 hours of the scheduled hearing date, excluding weekends and holidays. The WHC will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities.

PRE-HEARING RIGHT TO DISCOVERY [24 CFR 982.555(c)]

Participants and the WHC are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any WHC documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the WHC does not make the document available for examination on request of the family, the WHC may not rely on the document at the hearing.

The WHC hearing procedures may provide that the WHC must be given the opportunity to examine at the WHC offices before the hearing, any family documents that are directly relevant to the hearing. The WHC must be allowed to copy any such document at the WHC's expense. If the family does not make the document available for examination on request of the WHC, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

WHC Policy

The WHC will prepare a hearing summary of the issue and attach all documents it intends to present to the hearing officer. The WHC will construct the packet in duplicate – one for the hearing officer and one to remain in the WHC case file.

The family will be allowed to copy any documents related to the hearing at a cost of \$.10 per page. The family must request discovery of WHC documents no later than two business days prior to the scheduled hearing date

The WHC must be given an opportunity to examine at the WHC offices any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the WHC will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than two business days prior to the scheduled hearing date.

PARTICIPANT'S RIGHT TO BRING COUNSEL [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

INFORMAL HEARING OFFICER [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the WHC, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

WHC Policy

The WHC has designated the following order of persons to serve as second-step hearing officers:

- ~ Professional mediators, arbitrators or legal counsel
- ~ Qualified personnel from other area housing agencies
- ~ Qualified City of Wyoming personnel

ATTENDANCE AT THE INFORMAL HEARING

WHC Policy

Hearings may be attended by a hearing officer and the following applicable persons:

- ~ A WHC representative(s) and any witnesses for the WHC
- ~ The participant and any witnesses for the participant
- ~ The participant's counsel or other representative
- ~ Any other person approved by the WHC as a reasonable accommodation for a person with a disability

CONDUCT AT HEARINGS

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the WHC's hearing procedures [24 CFR 982.555(4)(ii)].

WHC Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

EVIDENCE [24 CFR 982.555(e)(5)]

The WHC and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

WHC Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence:

- ~ **Oral evidence:** the testimony of witnesses
- ~ **Documentary evidence:** a writing which is relevant to the case, for example, a letter written to the WHC. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
- ~ **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- ~ **Real evidence:** A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the WHC or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

HEARING OFFICER'S DECISION [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

WHC Policy

In rendering a decision, the hearing officer will consider the following matters:

- ~ **WHC Notice to the Family:** The hearing officer will determine if the reasons for the WHC's decision are factually stated in the Notice.
- ~ **Discovery:** The hearing officer will determine if the WHC and the family were given the opportunity to examine any relevant documents in accordance with WHC policy.
- ~ **WHC Evidence to Support the WHC Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the WHC's conclusion.
- ~ **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and WHC policies. If the grounds for termination are not specified in the regulations or in compliance with WHC policies, then the decision of the WHC will be overturned.

The hearing officer will issue a written decision to the family and the WHC no later than 10 business days after the hearing. The report will contain the following information:

Hearing information:

Name of the participant;
Date, time and place of the hearing;
Name of the hearing officer;
Name of the WHC representative; and
Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the WHC's decision.

Order: The hearing report will include a statement of whether the WHC's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the WHC to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the WHC to restore the participant's program status.

PHA NOTICE OF FINAL DECISION [24 CFR 982.555(f)]

The WHC is not bound by the decision of the hearing officer for matters in which the WHC is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws. If the WHC determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the WHC must promptly notify the family of the determination and the reason for the determination.

WHC Policy

The WHC will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in the WHC's file.

YOUR RIGHTS AT AN INFORMAL HEARING

- 1) To have a fair hearing by an impartial hearing officer.
- 2) You have the right to be represented by an attorney.
- 3) You have the right to present any evidence on your behalf, including witnesses.
- 4) You have the right to review and/or copy (at your expense) any evidence the WHC may have before the hearing.
- 5) If you or any member of your household are a person with disabilities and require special assistance or accommodation to attend the hearing, please contact your coordinator and arrangements will be made to accommodate your needs.
- 6) You have the right to request an interpreter if you cannot read, write or speak English.
- 7) If you are a victim of domestic violence, dating violence or stalking, you have certain protections under the Women Against Violence Act (VAWA).

If you request a hearing within the time frame allotted, the WHC will send you a Hearing Notification Letter, scheduling the date and time of the hearing.